

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of ROBERT C. CLAUS and DEPARTMENT OF DEFENSE,
AMERICAN HIGH SCHOOL, Wurzburg, Germany

*Docket No. 00-2540; Submitted on the Record;
Issued June 26, 2001*

DECISION and ORDER

Before BRADLEY T. KNOTT, A. PETER KANJORSKI,
PRISCILLA ANNE SCHWAB

The issue is whether appellant sustained an injury to his toe while in the performance of duty.

On October 18, 1999 appellant, then a 45-year-old educator, filed a notice of traumatic injury, Form CA-1, alleging that on October 16, 1999 while constructing a temporary fence for the homecoming dance, a concrete block fell on the large toe of his right foot. He claimed that his toe was fractured, became swollen and developed a hemotoma. On the reverse of the form, appellant's supervisor indicated that appellant had not stopped working.

By letter dated May 12, 2000, the Office of Workers' Compensation advised appellant that the information submitted in his claim was not sufficient to determine whether appellant was eligible for benefits under the Federal Employees' Compensation Act. The Office advised appellant of the additional medical and factual evidence needed to support his claim.

By decision dated June 13, 2000, the Office denied appellant's claim. The Office found that, while the evidence of file supported that appellant experienced the claimed incident, *i.e.* the concrete block fell on his toe, the evidence did not establish that the incident caused an injury. Therefore, it was determined that appellant did not sustain an injury as alleged.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty as alleged.

An employee seeking benefits under the Act¹ has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of

¹ 5 U.S.C. §§ 8101-8193.

duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.² These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.³

In order to determine whether an employee actually sustained an injury in the performance of duty, the Office begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components, which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident, which is alleged to have occurred.⁴ In this case, the Office acknowledged that the incident, in which a concrete block fell on appellant's toe, occurred as alleged. The Board finds that the evidence of record supports this incident.

The second component is whether the employment incident is whether the employment incident caused a personal injury and generally can be established only by medical evidence. To establish a causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence, based on a complete factual and medical background, supporting such a causal relationship.⁵

In this case, it is not disputed that appellant experienced the claimed work factor, *i.e.*, a concrete block fell on his toe in the course of his employment with the employing establishment. However, appellant has submitted no medical evidence establishing that he sustained any injury due to the concrete block falling on his toe. On May 12, 2000 the Office advised appellant of the type of medical evidence needed to establish his claim. However, such evidence was not submitted.

As noted above, part of appellant's burden of proof includes the submission of medical evidence establishing that the claimed condition is causally related to employment factors. As appellant has not submitted such evidence, he has not met his burden of proof in establishing his claim.⁶

² *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

³ *David J. Overfield*, 42 ECAB 718 (1991); *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁴ *Elaine Pendleton*, *supra* note 2.

⁵ *See* 20 C.F.R. § 10.110(a); *John M. Tornello*, 35 ECAB 234 (1983).

⁶ On appeal appellant submitted medical reports from three physicians and asked for "reconsideration." The Board's jurisdiction is limited to review of evidence, which was before the Office at the time of its decision. Appellant may resubmit this evidence to the Office as part of a request for reconsideration. 20 C.F.R. § 501.2(c).

The decision of the Office of Workers' Compensation Programs dated June 13, 2000 is hereby affirmed.

Dated, Washington, DC
June 26, 2001

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

Priscilla Anne Schwab
Alternate Member